IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CRIMINAL JURISDICTION

CRIMINAL WRIT PETITION NO. 1711 OF 2005

Shri. Devidas @ Dasha Bhagoji
Shinde, aged 23 years, residing
at R/O, New Sahyadri Nagar "B",
Near Ambedkar Statue, Vashinaka,
Chembur, Mumbai-400 074. .. ..Petitioner

Versus

1. A. N. Roy, Commissioner
of Police, Greater Bombay.

2. The State of Maharashtra.

3. The Superintendent,
Nasik Road Central Prison,
Nasik. .. ..Respondents

Shri. U. N. Tripathi, Advocate, for the Petitioner.

Shri. D. S. Mhaispurkar, A. P. P., for the Respondent-State.

CORAM : S. B. MHASE AND
S. R. SATHE, JJ.
DATE : OCTOBER 25, 2005

ORAL JUDGEMENT (PER S. R. SATHE, J.)

. By this criminal writ petition under Article 226 of the Constitution of India, the petitioner is challenging the order of detention passed against him by Respondent No. 1- the Commissioner of Police, Greater Bombay dated 21.2.2005 in exercise of the powers conferred under subsection (2) of section 3 of the Maharashtra Prevention of Dangerous Activities of

Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (For the sake of convenience hereinafter referred to as the "MPDA Act").

2. The order of detention in this case is based on one C.R. and two *in camera* statements. C.R. No. 272 of 2004 was filed for the offences punishable under sections 302, 307, 324, 323, 143, 147, 148, 149, 452, 427 of the Indian Penal Code read with section 37 (a) of the Bombay Police Act. It was pertaining to the incident dated 16.12.2004. *In camera* statement of witness "A" recorded on 10.1.2005 was in respect of an incident which occurred in the first week of December 2004. Statement of witness "B" was recorded on 13.6.2005, which had reference to the incident which occurred in the second week of December 2004.

3. On the above material, the detaining authority was subjectively satisfied that the petitioner was indulging in activities prejudicial to the maintenance of public order. Hence the detaining authority passed an order of detention on 21.2.2005.

4. Although, in the petition the order of detention is challenged on several grounds, at the time of hearing, Shri. Tripathi, learned Counsel for the Petitioner,

has pressed into service only two grounds. First ground is the one mentioned in clause (B). It runs as follows:

> "(B) The Petitioner says and submits that the detenu was already in judicial custody having not been granted bail by the Court. The detenu submits that it is therefore unwarranted and unjustified to clamp detention law on a person who is already in custody and is already deprived from committing any prejudicial activities. This shows non-applicatioan of mind of the detaining authority. Moreover the detaining authority has not applied his mind to the facts of this case, particularly he has not taken into consideration the role of the petitioner in the incident. The Petitioner further submits that he has never applied for bail in any courts. The detaining authority has no material before him to come to conclusion that the detenu may be granted bail under normal law of land in near future. The order of detention is illegal and bad in law, ought to be quashed and set aside."

5. It is an admitted fact that at the time when the detention order was passed, the detenu was in judicial custody as he was arrested in connection with C.R. No. 272 of 2004 for the offence punishable under section 302 of the Indian Penal Code. In view of this position, Shri. Tripathi, learned Counsel for the petitioner, argued before us that there was no necessity for the detaining authority to pass the order of detention, particularly when there was no cogent material before the detaining authority to hold that the detenu was likely to be released on bail and the detenu had, in fact, not preferred any application for bail. It is true that it is well-settled that if a man is in custody and there is no imminent possibility of his being released, the power of preventive detention should not be exercised. It has been so observed in the case of Binod Singh v. District Magistrate, (1986) 4 Supreme Court Cases 416. Naturally, the question arises as to what are the factors which must be considered by the detaining authority in such a situation. In the case of Vijay Kumar v. Union of India, A.I.R. 1988 Supreme Court 934, Their Lordships have observed that two facts must appear from the grounds of detention, namely, (1) awareness of the detaining authorithy of the fact that the detenu is already in detention, and (2) there must be compelling

reasons justifying such detention, despite the fact that the detenu is already under detention. So, it is not that in no circumstances the detaining authority can pass order of detention when the detenu is already in judicial custody. The legal position about this has been summed up in the case of N. Meera Rani v. Govt. T. N., A.I.R. 1989 Supreme Court 2027 as under :

> " We may summarise and reiterate the settle principle. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention and the decision must depend on the facts of the particular case; preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order etc. ordinarily it is not needed when the detenu is already in custody; the detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order; but, even so, if the detaining authority is reasonably satisfied on cogent material that there is likelihood of his release and in view of his antecedent activities which are

proximate in point of time he must be detained in order to prevent him from indulging in such prejudicial activities the detention order can be validly made even in anticipation to operate on his release. This appears to us to be the correct legal position. "

6. Bearing in mind the above settled legal position, if we see the grounds of detention in question, and in particular paragraph (7) of the same, we find that the detaining authority was aware of the fact that the detenu is involved in the offence punishable under section 302 of the Indian Penal Code and at the relevant time he was in judicial custody. Besides this, it is also very clear that having regard to the antecedents reflected from the statements of the witnesses recorded in C. R. No. 272 of 2004 and the statements of witnesses "A" and "B", there was a reasonable apprehension in the mind of the detaining authority that if the detenu is released on bail in the abovementioned C.R., then he is likely to indulge in similar criminal activities prejudicial to the maintenance of public order. Merely because he was involved in the offence punishable under section 302 of the Indian Penal Code, it cannot be argued on behalf of the petitioner that there was no possibility of the

detenu being released on bail. Similarly, merely because till that time the detenu had not filed bail application was also not sufficient. In fact, the detaining authority took into consideration the fact as to what will happen if the application for bail is submitted by the detenu and is released on bail in the said C.R.

7. If we peruse the reply filed by respondent No. 1, which is at page 38 of the present proceedings, it appears that the detaining authority has taken into consideration the individual role played by the petitioner-detenu in the above-mentioned C.R. The petitioner's individual overt act was only to the extent of giving a slap to the deceased. Of course, the associates of the petitioner were also involved in the said C.R. and the case was, in fact, registered also for the offences punishable under sections 143, 147 148,149 of the Indian Penal Code. Thus, we find that the detaining authority had, in fact, applied its mind and after taking into consideration all the cogent material that was placed before him had reached to the conclusion that the facts and circumstances of the case warrant to pass an order of detention. We are, therefore, of the view that there is absolutely no substance in the arguments advanced by learned Counsel

for the petitioner that there was no application of mind on the part of the detaining authority. The order of detention cannot be set aside on that ground.

8. The second ground is mentioned in clause "D" of the petition. It runs as follows :

> "D) The Petitioner says and submits that with reference to Para 5(a) (iii) of the grounds of detention, there is a reference to C.R. No. 271/2004 lodged by Shri. Vijay Kadam on 26/12/2004. The detenu says and submits that only F.I.R. of the abovesaid case is furnished to the detenu and no other document is furnished. As a result the detenu is deprived from making effective representation. The Petitioner says and submits that the above said C.R. No. 271/04 was referred to and relied on by the detaining authority. It is the bounden duty of the authority to furnish all relevant copies of the abovesaid case to the detenu to enable him to make effective representation. In this case since no other documents of C.R. No. 271/04 are supplied to the detenu he is deprived from making

effective and purposeful representation, as such his rights guaranteed under Article 22 (5) of the Constitution of India is violated. The order of detention is illegal and bad in law for non-supply of relevant documents of the abovesaid case. The order of detention is liable to be quashed and set aside. "

9. Shri. D. S. Mhaispurkar, the learned A.P.P., has pointed out that C. R. No. 271 of 2004 was, in fact, lodged by Vijay Kadam, an associate of the present petitioner. The said C.R. was in respect of an assault made by the complainant in C. R. No. 272 of 2004. In retaliation, the complainant in that C.R. Number had assaulted the present petitioner and his associates. So it is very clear that in that C.R.No. 271 of 2004, the present petitioner was not at all shown as an accused. So there was no question of supplying papers of the said case to the present petitioner. Even then, copy of the First Information Report in C.R. No. 271 of 2004 was provided to the petitioner.

10. Much is made about the fact that copies of other documents, viz., Panchanama of the place of offence and the Inquest Panchanama of the deceased Ahmad Umar Amar

Parkar were not supplied. However, it is brought to our notice that so far as the spot panchanama is concerned, it was common in both the C.Rs., that is to say, C.R. No. 272 of 2004, which was filed against the present petitioner and others and the other C.R. No. 271 of 2004 in which the present petitioner was not at all shown as an accused. A copy of the said Panchnama was already provided to the petitioner while giving copies of the papers in C.R. No. 272 of 2004. So, under these circumstances, there is, in fact, no reason for the petitioner to make any grievance about the non-supply of the copies of the papers in C. R. No. 271 of 2004. Moreover, as stated by respondent No. 1, the detention order was not at all based on C. R. No. 271 of 2004. Not only that but the papers in the said C.R. were not material for passing detention order against the petitioner. When such is the position, we have no hesitation to hold that there is absolutely no substance in ground "D" mentioned above. Apart from this, even if it is held for the sake of argument that those documents were material, still then, that will not make any difference because the order of detention is based mainly on C. R. No. 272 of 2004 and the two *in camera* statements of witnesses "A" and "B". Having regard to the provisions of section 5A of the MPDA Act and the law laid down by the

Apex Court in the case of Attorney General of India v. Amratlal Prajivandas, 1995 Cri. L. J. 426, the order of detention made on two or more grounds shall be deemed to have been made separately on each of such grounds and hence even if the order is vitiated on one ground, the same cannot be set aside when the same is unassailable and valid on the other grounds. In the instant case, we are, in fact, of the view that the order of detention is sustainable on all the grounds and there is absolutely no substance in the contentions raised by the petitioner in clauses "B" and "D" mentioned above.

11. In this view of the matter, there is no substance in this criminal writ petition. Hence the writ petition is dismissed. Rule is discharged.

(S.R.SATHE,J.) (S.B.MHASE,J.)